

REMARKS

Claims 9-16 have been previously withdrawn. Claims 1-8 stand rejected. Claim 5 has been cancelled while claims 1, 2, 4, 6 and 8 have been amended. Therefore, claims 1-4 and 6-8 are at issue.

35 U.S.C. § 112

Claims 1-8 stand rejected under 35 U.S.C. § 112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicant regards as the invention. Specifically, the Office Action alleges the term “small” in claim 1 is a relative term which renders the claim indefinite. Applicant has amended claim 1 to remove the term “small” and therefore requests withdrawal of this rejection.

Additionally, claim 8 recited the term “(Epidermal Growth Factor, EGF) recombining” which has also been removed. Therefore, Applicant respectfully requests that this rejection also be withdrawn.

Furthermore, claim 8 also recited the term “Fetal bovine serum (FBS)” without providing a quantity or concentration. Claim 8 has therefore been amended to recite ““Fetal bovine serum (FBS) 12.5%.” Applicant requests that this rejection also be withdrawn.

Claims 1 and 5 recited “tissue sample segments (6a)” while claim 4 recited “tissue sample (6)” which the Office Action alleges are unclear. These terms have been deleted from the claims and therefore Applicant requests that this rejection also be withdrawn.

The Office Action also alleges that claim 2 is unclear. Applicant has amended this claim as suggested by the Primary Examiner to recite “fine needle, aspiration, intraoperative biopsies or a resection sample” thereby overcoming the rejection.

35 U.S.C. § 102

Claims 1 and 2 stand rejected under 35 U.S.C. § 102 as being anticipated by Kornblith. Claim 1 has been amended to incorporate the subject matter of claim 5 and therefore claim 5 has been cancelled. Claim 1, as amended, recites a “0.01% to 3% oxygen atmosphere” in addition to other elements. This aspect is simply not disclosed or suggested in Kornblith.

As seen on page 5, lines 26-27, Kornblith does disclose that the “(F)lasks are placed in a 35°C, non-CO₂ incubator.” A standard non CO₂ incubator, as described in Kornblith, would provide an oxygen concentration of approximately 21% and not 0.01% to 3% as recited in claim 1, as amended. Therefore, as Kornblith fails to disclose or suggest one or more aspects recited in claim 1, the rejection should be withdrawn.

Claim 2 depends from and more specifically recites the method of claim 1. Therefore, the rejection of claim 2 should similarly be withdrawn.

35 U.S.C. § 103

Claims 1-3 and 6-7 stand rejected as being unpatentable over Kornblith in view of Freshney. This rejection should also be withdrawn for similar reasons to those stated above.

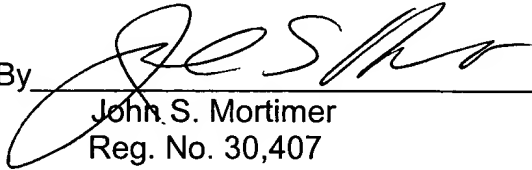
Specifically, claim 1, as amended, recites a 0.01% to 3% oxygen atmosphere. As argued *supra*, Kornblith fails to disclose or suggest this aspect. Freshney also fails to disclose or suggest the claimed oxygen atmosphere. Therefore, as Kornblith and Freshney, taken alone or in combination, fail to disclose or suggest the recited oxygen atmosphere, the rejection of independent claim 1, as well as dependent claims 2-3 and 6-7, should be withdrawn.

Therefore, Applicant respectfully requests reconsideration of the rejections of claims 1-4 and 6-8 and allowance of the case. Should additional fees be required in connection with this matter, please charge our Deposit Account No. 23-0785 the necessary amount.

Respectfully submitted,

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By


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